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WIT AND HUMOR IN ATHENIAN COURTS

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Philocleon in the *Wasps*[1] of Aristophanes meets his son's attempts to turn him from "his up-early-false-informing-troublesome-litigious life" to a "life of ease and splendor" with an enthusiastic description of the joys of the dicasts which might be entitled, "This is the life." Of the litigants he says, "Some tell us tales of other times and quote old Aesop's wit, and crack their jokes to make us smile." Now jokes and stories are remarkably scarce in Attic forensic oratory, and one would be inclined to dismiss these statements as gross exaggerations were it not for the serious protest of Demosthenes[2] against the prevailing practice of distracting attention from serious offenses by a display of wit in the courtroom. "You, O Athenians, acquit men who are plainly proved guilty of the gravest offenses if they merely say one or two witty things, and some fellow-tribesmen, chosen to be their advocates, plead for them. If you do convict anyone you fix the penalty at twenty five drachmas." Demetrius[3] also comments on forensic wit:

Some pleasantries—those of the poets—are loftier and more dignified, while others are more commonplace and jocular, resembling banter, as is the case with those of Aristotle and Sophron and Lysias. Such witticisms

[1] 548 ff. [2] *Contra Aristocratem* 206.

[3] *On Style* 128. Cf. 262. Roberts' translation. Cf. Blass, *Att. Bereds.*, I, 632; Jebb, *Attic Orators*, I, 180.

as "whose teeth could sooner be counted than her fingers" and "as many blows as he deserved to win so many drachmas has he won" differ in no way from jibes, nor are they far removed from buffoonery.

The quotations are from Lysias. Both Aristophanes and Demosthenes are interested witnesses, for it suits the purpose of both to exaggerate, and in estimating the value of Demetrius' testimony in this connection it is well to remember that he cites Xenophon[1] as a humorist.

A survey of the remains of Attic forensic oratory and other appropriate sources yields so little in the way of stories, jests, and humor that the material is easily assembled. Curiously enough the only story extant is credited to Demosthenes himself. On one occasion when he was defending a prisoner on a capital charge he observed that the dicasts were listless and inattentive. Thereupon he said, "Gentlemen, I have an amusing tale to tell you. A man hired an ass to take him from Athens to Megara. The sun became so hot at noon that he dismounted and sat in the shade of the ass. The driver objected. 'Why, man,' cried the traveler, 'did I not hire the ass for the day?' 'Yes, indeed,' replied the driver, 'to carry you but not to shelter you.' Each party insisted on his view and neither would yield. Finally they went to law."[2] The orator ceased, but the jurymen clamored to know the outcome of the case. "What," said Demosthenes, "are you so interested in a dispute about a donkey's shadow, and yet in a matter of life and death you will not even take the trouble to listen?" Demosthenes is also credited with a bit of effective repartee.[3] A thief nicknamed Brass once reproached Demosthenes for keeping late hours and writing speeches by candle light. "I know very well," replied Demosthenes, "that you would rather have all lights out: and do not wonder, Gentlemen, that many robberies are committed, since we have thieves of brass and walls of clay." One might suppose that the great duel between Aeschines and Demosthenes would yield some characteristic bits of Attic humor. But disappointment awaits him. I note one example. It was good form in Athens for a speaker to keep

[1] Jebb, *Attic Orators*, I, 131.

[2] Scholiast on the *Wasps* 191. Cf. Rogers' note.

[3] Plutarch, *Life of Demosthenes*.

his right hand within the folds of his robe. Demosthenes[1] alludes to this custom when, accusing Aeschines of accepting bribes from Philipp of Macedon, he says, "You ought to keep your hand under your robe not when you are on the platform but when you are on an embassy." Scurrilous abuse and vulgar personalities are plentiful, but humor is rare. The struggle was too bitter and the passions aroused too violent. In the oration on the Crown, Demosthenes ends a lengthy tirade with a famous series of antitheses. "You taught reading, I went to school; you performed initiations, I received them; you danced in the chorus, I paid for it; you were an assembly clerk, I was a speaker in the assembly; you acted third-rate rôles, I was in the audience; you broke down, I hissed." This comes as a welcome relief to the detailed personalities that precede, but an angry man cannot be humorous.

That a personal attack can be humorous appears in a passage in Lysias.[2] The defendant was Aeschines, a former pupil of Socrates. The speaker had lent him a sum of money to embark in business as a distiller of perfumes, "reflecting that he was a disciple of Socrates and was in the habit of discoursing impressively concerning virtue and justice." Many others also were deceived by his fine professions. "I am not the only one," continues the speaker, "whom he has treated in this fashion. Have not the grocers in his neighborhood shut up shop and sued him? His neighbors have been so annoyed by him that even those who own houses have moved into rented quarters elsewhere. His creditors swarm to his house in such numbers from early morning demanding their money that passers-by think a funeral is in progress. The merchants in the Piraeus regard a business transaction with him as more dangerous than a voyage to the Adriatic. For he thinks what he has borrowed is more his own than what he inherited from his father." His propensity for borrowing is well attested by the story that Socrates[3] advised him to borrow from himself by cutting down his rations. The attack ends with a scandalous story about Aeschines. The woman in the case is said to be so old that "her teeth are more easily counted than her fingers."

[1] *De Corona* 255. [2] Fragment 1. [3] Diogenes Laert. ii. 62.

A few chance witticisms occur. A client of Demosthenes,[1] defendant in a drainage suit, asks plaintively, "What am I to do with the surplus water on my land if I can drain it neither on to the road nor on to my neighbors' land? Will the plaintiff insist that I drink it?" A client of Lysias[2] on trial for killing his wife's paramour, as the law permitted him to do, remarks with grim humor that if he is convicted of murder an unfortunate precedent will be established and in future housebreakers caught in the act will escape violence by claiming that they are adulterers.

Occasionally an entire passage is permeated with humor. In one of Isaeus' speeches,[3] said to have been delivered by Isaeus himself in the interest of a friend, occurs an amusing description of the claimants to the estate of one Nicostratus who died abroad. I quote a few sentences only as the passage is long. "Who did not have his hair cropped in mourning when those two talents came from Ake? Who did not put on black in the hope of inheriting the money by his display of grief? What a crowed of relatives, and sons by testamentary adoption appeared as claimants of the estate of Nicostratus! . . . . Ameiniades appeared before the archon with a son of the deceased under three years of age though Nicostratus had not been in Athens for eleven years."

The speech of Lysias[4] in behalf of a cripple who was in receipt of state aid is unique in that it is pervaded by a "broad humor just stopping short of burlesque." The list of state dependents was revised periodically and any citizen might on these occasions present reasons to the senate why a particular individual ought not to continue to receive the gratuity. The cripple in the case was an old man who kept a small shop where he plied a trade. According to the accuser his place was a favorite resort for a group of undesirable citizens. Evidently the cripple was a more or less privileged character with a sharp tongue. Lysias seeing the humor of the situation hit it off in a most amusing speech which must have gratified the court habitues and the Philocleons in the senate and confounded the unlucky accuser. It is a mixture of serious pleading, ironical

[1] lv. 18.

[2] i. 36. For other examples see Demos. lv. 4; Lysias vii. 1, 14; xvi. 15.

[3] iv. 7. [4] xxiv.

pathos, and witty retort. Among the possible motives for the attack on his pittance of an *obol* (three cents) a day he suggests blackmail. "If I were selected to furnish a chorus for a drama—a ridiculous supposition—my opponent would perform the liturgy ten times rather than exchange property once." "Why does he not claim that I am a vigorous person because I handle two canes while others use only one?" The accuser had charged him with being a violent, overbearing, and insolent person referring no doubt to his impudent manners and ready tongue. But the cripple chose to understand him to mean that he bullied people, a manifest absurdity. In answer to the charge that his shop was frequented by disreputable citizens he replies that they are neither better nor worse than the jurors, each of whom has his favorite lounging place among the barbers and bakers and candle-stick makers, a rare piece of impudence. Occasional bits of homely philosophy appear. Old men must be careful. Young men are pardoned for their youthful errors but elderly wrongdoers are condemned alike by old and young. "This trial," he concludes, "is a two-penny half-penny (*obol*) affair. If I get justice I'll be grateful to you and my accuser will learn in future not to attack weaklings but his equals."

The modern reader, familiar with anthologies of court humor, is naturally disappointed with the meager amount of humor found in the speeches of the fellow-citizens of Aristophanes. But in this connection it should be remembered that there are marked differences between Athenian and modern procedure. The main sources of wit and humor in a modern court are the retorts of recalcitrant witnesses in the course of cross-examination and the *obiter dicta* of the judges, both of which were unknown in an Athenian court. At the time of the presentation of the *Wasps* (423) witnesses were questioned but not cross-examined; in the fourth century all testimonial evidence was presented in the form of affidavits. The nearest approach to cross-examination was the interrogation[1] of litigants by each other in open court, a proceeding which may well have afforded a quick-witted man plenty of opportunity for repartee and retort; but such examinations as are recorded are wholly devoid of humor. Indeed these interrogatories were unsuited to professional speeches and

[1] Cf. Socrates' examination of Meletus in the *Apology*.

were soon abandoned by the legal profession. The progress of a cross-examination could not be anticipated by the legal adviser, and a man who could not compose his own speech would not be likely himself to venture upon an interrogation of his opponent. The bulk of the extant speeches were not composed by the men who delivered them but by experts whose professional success depended in some measure upon their ability to adapt their compositions to the characters of their clients. A lawyer who lacked a sense of humor could not compose a witty speech, and a client who lacked it ought not to deliver one. For humor is spontaneous. There is more humor in the professional speeches of Lysias than in those of the other orators just because he above all others sought to portray the character of his clients. If a client displayed a sense of humor it was the merit of Lysias that he tried to reflect it in his speech. Occasionally a whole speech might be permeated with humor, but, as a rule, sarcasm and pleasantries are sporadic. This is natural. It is more than probable that Lysias picked up a number of humorous expressions used by the cripple in discussing his case, and cleverly incorporated them in his speech. The same is true of the man who sued Aeschines. Indeed it is not at all unlikely that the majority of the pleasantries that appear in Lysias' orations originated with his clients. He displays his own sense of humor in seizing upon and employing them skilfully.

In view of the paucity of humor in the professional orations it is clear that we must look elsewhere for the jokes and stories that amused Philocleon and scandalized Demosthenes. This is certain in the case of Aristophanes whose *Wasps* appeared before the advent of the professional speech writer. Demosthenes is evidently referring to comparatively trivial[1] cases as the size of the fine—twenty-five drachmas shows—just the type of case that a man would be most likely to handle himself without incurring the expense of hiring a lawyer. And it is from men who had the assurance to handle their own cases that repartee, jokes, and witticisms are to be expected. Moreover, these are the only litigants who could safely venture to

[1] It is true that Demosthenes describes them as grave (τὰ μέγιστ' ἀδικοῦντες), but this may be largely rhetorical exaggeration.

"drag up and cross-examine their opponents, setting little legal traps."[1]

In this connection it must not be forgotten that a published speech was not a record of all that was said and done in court. Plato represents Socrates as addressing the jury informally for a few minutes after the conclusion of the trial. And Philocleon[2] says, "If ever Oeagrus (a famous actor) gets into a suit be sure that he'll never get out again until he gives us a speech from his Niobe part, selecting the best and the liveliest one. And if a piper gain his cause he pays us our price for the kindness done by piping a tune with his mouth band on, quick march as out of the court we go." In Antiphon,[3] Philocrates went before a court which was to hear a case on the following day brought by the Choreutes, and charged him with murder. The Choreutes at once replied. The whole proceeding was entirely informal for the homicide case had not yet been entered for trial. Philocrates evidently utilized an interval between cases to make his accusation for the purpose of prejudicing the jurors against the Choreutes when he appeared as prosecutor the next day. Such informalities as these may easily have afforded opportunities for jests and stories. How far a published speech differed from the one actually delivered it is impossible to say. At any rate one may doubt that Demosthenes would have included the story of the ass's shadow in a published version of his speech. It would seem then that the professional speech writers made little effort to introduce jests and pleasantries into their compositions. Consequently the jokes and stories that delighted Philocleon and annoyed Demosthenes must have appeared in the interrogatories and speeches composed by the litigants themselves and in the informal exchanges and proceedings permitted in an Athenian court.

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[1] Aristoph. *Acharnians* 687.

[2] Aristoph. *Wasps* 579 ff.

[3] *Choreutes* 21 ff.